IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 28580 of 2007(S)

I.A.NO.48/2007 IN MC.136/2006 of FAMILY COURT, NEDUMANGAD
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PETITIONER:

M.KRISHNA KUMAR,
KOPPOTHIL PUTHEN VEEDU, ANAD, NEDUMANGAD.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:
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1. S.SUNITHA,
RESHMI BHAVAN, KOPPAM, ANADU, NEDUMANGAD.

2. RESHMI,
RESIDING AT -DO- -DO-

3. RENJITH,
-DO- -DO-

(RESPONDENTS 2 AND 3 ARE REPRESENTED BY 1ST RESPONDENT.)

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

W.P(C)No.28580 of 2007

Dated this the 26th day of September, 2007

JUDGMENT

Kurian Joseph,J.

Petitioner is aggrieved by the alleged onerous condition fixed by the Family Court for setting aside the ex parte order passed in M.C.No.136 of 2006. In I.A.No.48/2007 the court has directed payment of Rs.11,500/-, the arrears of maintenance, as a pre-condition for setting aside the ex parte order and for non-compliance of that condition, the petition itself was dismissed. Learned counsel for the petitioner submits that the Family Court is not justified in providing for a pre-condition for setting aside the ex parte order. The petition should have been considered on merits and if required, the court should have only imposed costs. We are afraid, the contentions may not be right. The petitioner in any case, was liable to pay the past maintenance. The court has only directed payment of the same. May be the petitioner has a good case on merits. But he cannot shirk away from his liability to pay the past maintenance arising out of the orders

already passed, unless duly modified. But at the same time there appears to be a genuine grievance for the petitioner that he cannot pay the amount in lump and that he need some time. These are matters for the petitioner to bring to the notice of the Family Court in which case the said Court will pass appropriate orders enabling the petitioner to pay the past maintenance now directed to be paid, in instalments. Depending on the orders to be passed by the Family Court, the petitioner is also free to move the family court for reviewing the orders already passed.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.